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7 **UNITED STATES BANKRUPTCY COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 In re:) Chapter 11
10 Benyam Mulugeta and) Case No.: 09-51900 ASW
11 Paula R. Mulugeta,) Date: 5/30/2013
12) Time: 2:15 p.m.
13 Debtors.)
14)
15)

16 **OPPOSITION TO APPLICATION FOR COMPENSATION**

17 **FACTS**

18 Applicant Campeau Goodsell ("Applicant") was employed as
19 debtors' counsel between April 2009 (see Docket 32, Application
20 for Appointment filed on April 2, 2009) and October 2009 (see
21 Docket 164, Motion to Withdraw, filed October 5, 2009). In that
22 brief period of time Applicant contends that it accrued fees of
almost \$100,000.

23 The employment was based upon Applicant's expectation that
24 debtor would be able to sell a hotel located in Oakland,
25 California ("Harrison Hotel"). The parties agreed upon a
retainer of \$100,000 that would be funded from the proceeds

1 expected from sale of the Harrison Hotel (see Application for
2 Compensation , pp. 4-5). When no sale occurred, Applicant lost
3 interest in the case and moved to withdraw. Debtors became
4 aware of the inadequacy of Applicant's representation: no cash
5 collateral motion was filed despite the fact that debtors owned
6 many rental properties and no advice was given regarding the
7 danger of accruing post-petition taxes. Debtors never received
8 any billing statements from Applicant; and, after more than
9 three years, assumed Applicant had waived any fees.

10 FAILURE TO PROVIDE PERIODIC BILLING

11 From the outset of Applicant's representation, it had a
12 duty to provide periodic statements of its fees. The Attorney-
13 Client Fee Contract, attached to the Declaration of William
14 Healy, and filed herein on April 2, 2009 (Docket No. 32) at page
15 2 thereof at paragraph 7 states as follows: "STATEMENTS.
16 Attorney shall send Client periodic statements for fees and
17 costs incurred."

18 The Bankruptcy Court's Guidelines for Compensation, posted
19 on its website, at paragraph 7 thereof states that "Billing
20 statements should be sent to the employing entity (debtor in
21 possession, trustee or official committee) on a monthly basis."

22 Applicant supervised monthly operating reports ("MORs"),
23 including the August MOR filed on September 21, 2013 (Docket No.
24 158). Although the Balance Sheet, under Liabilities at number
25

22, included a line item for "accrued professional fees," the line was left empty.

ROUTINE SERVICES

The services provided were routine: debtor owned multiple real property rentals, so there were many motions for relief from stay. However, none involved unusual issues or evidentiary hearings. There seems to have been no adversary proceedings, appeals, nor any plan prepared.

There were two motions to attempt to sell the Harrison Hotel, both abortive, but the first motion (Docket No. 83) was filed as a motion to sell free and clear, even though there was no basis for it.

Most glaring is that Applicant failed to file any cash collateral motions. One cannot help but wonder that if they had been filed, then, perhaps debtors may well have avoided the many motions for relief from stay that were filed.

POST-PETITION TAXES

The MOR for April 2009, filed on May 22 as Docket No. 80, disclosed in the Balance Sheet a liability of \$206,000 for post-petition taxes. Despite the admonition on the MOR Summary Page, no attachment providing an explanation was provided.

The August 2009 MOR (Docket No. 158), in the Balance Sheet disclosed that the delinquent post-petition taxes had grown to \$314,000. Again, no explanation was attached.

BILLING STATEMENTS ARE INACCURATE

1 Debtors believe that the billing statements attached to the
2 fee application are inaccurate. However, they need additional
3 time to gather their records. Debtor wife has been out of the
4 country for the past month, and debtor husband has not been able
5 to review all of his records that had been stored after he moved
6 from his main Palo Alto house to the granny unit.

7 Some examples of inaccuracies are:

8 In Block A and B on 7/10/2009, and 9/3/2009 and 9/4/2009
9 duplicate entries regarding the Harrison Hotel

10 In Block A on 9/3/2009, a conference regarding "sale status,"
11 and in Block B on 9/4/2009, a conference re "strategy and
12 planning re Harrison."

13 In Block C, "Review Lone Oak's opposition" on 9/15 and 9/16

14 In Block D, "Draft opposition to Lone Oak" on 5/26, "prepare
15 opposition to Lone Oak" on 5/27, "Research potential opposition"
16 on 5/28,

17 In Blocks A and B, there are numerous entries for conferences
18 between attorneys Healy and Goodsell.

19 In Block B, draft motions/stipulation for cash collateral on 6/8
20 and 6/9, although no cash collateral matters were ever submitted
21 to court.

22 PREJUDICE TO DEBTOR

23 Debtors reasonably believed that no fees were being
24 requested by Applicant. In reliance they moved to have the
25 Court reconsider dismissal of the case, they negotiated for a

1 recovery of \$100,000 from a creditor, and based on the recovery
2 they filed and served a plan. Now, out of the shadows,
3 Applicant threatens to sink the ship.

4 LEGAL STANDARD

5 The lodestar calculation of reasonable hourly rate times
6 reasonable hours spent is the starting point. Hensley v.
7 Eckerhart, 461 U.S. 424, 433 (1983). From there, the court
8 should consider a downward adjustment based on the important
9 factors of "results obtained," and whether the applicant
10 achieved "a level of success that makes the hours reasonably
11 expended a satisfactory basis for making a fee award." Id. at p.
12 434.

13 Finally, the Court may abandon the lodestar method if it is
14 grossly disproportionate to the amounts at stake. In re Auto
15 Parts Club, Inc. 211 B.R. 29, 35(9th Cir. BAP 1997).

16 The Court should deviate dramatically from the lodestar.
17 \$100,000 for a case such as this is grossly disproportionate by
18 any standard. Most important, Applicant can point to little
19 success during its tenure, and seemingly much over-lawyering.

20 LACHES

21 Section 503(a) requires that a request for administrative
22 expense be "timely filed." Although the term "timely" is
23 nowhere defined, the term "at any time" was construed in the
24 case of In re Beaty, 306 F.3d 914(9th Cir. 2002). In Beaty, the
25 issue arose in connection with a creditor's adversary proceeding

1 to except an unscheduled debt from discharge. The action was
2 commenced six years after Beaty's discharge. Bankruptcy Rule
3 4007(b) stated that a complaint to determine dischargeability
4 could be brought at any time. Nevertheless, debtor moved for
5 summary judgment based on laches. The BAP ruled that laches
6 could never be a defense. Although the Ninth Circuit affirmed
7 the BAP, it disapproved of its reasoning. "The doctrine of
8 laches, which has as its goal the prevention of prejudicial
9 delay in the bringing of a proceeding, is a relevant and
10 necessary doctrine in the bankruptcy context." Id. at p. 922.
11 "The authorization in Rule 4007(b) for filing such an action "at
12 any time" does not forbid a court from applying laches in
13 appropriate circumstances; in other words, the phrase "at any
14 time" does not mean "at any time no matter what and no matter
15 how inequitable." Id. p. 925.

16 If proceedings subject to the phrase "at any time" are
17 subject to laches, then with even more force should be
18 proceedings subject to the phrase "timely."

19 Here we have unreasonable delay in making a fee request,
20 combined with clear prejudice to debtors. Laches "is not a
21 doctrine concerned solely with timing. Rather, it is primarily
22 concerned with prejudice." Id. p. 924.

23 CONCLUSION

24 The application for compensation should be denied.

25 Dated: 5/23/2013 /s/Stanley Zlotoff